

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TELEPET USA, INC.,

Case No. 2:15-CV-846 JCM (GWF)

Plaintiff(s),

ORDER

V.

QUALCOMM INCORPORATED,

Defendant(s).

13 Presently before the court is plaintiff Telepet USA, Inc.'s (hereinafter "plaintiff") motion
14 for leave to file a supplemental response. (Doc. # 40).

15 On June 23, 2015, defendants filed a motion to compel arbitration and to dismiss. (Doc. #
16 22). On July 10, 2015, plaintiff filed a response. (Doc. # 30). On July 20, 2015, defendants filed
17 a reply. (Doc. # 37).

18 In their reply, defendants suggest that certain of plaintiff's arguments are moot because the
19 American Arbitration Association ("AAA") is in the process of reopening the parties' arbitration.
20 (Doc. # 37). Defendants submit evidence in the form of emails and letters to substantiate these
21 claims. (Doc. # 37, exhs. 1-6).

22 In the instant motion, plaintiff states that it agreed to dismiss this action without prejudice
23 to allow the matter to proceed before the AAA on certain conditions. (Doc. # 40). Plaintiff
24 represents that while defendants have agreed to one of plaintiff's proposed conditions, that
25 defendants shall advance costs on behalf of plaintiff, defendants have failed to address plaintiff's
26 other desired conditions. Plaintiff therefore seeks leave to file a supplemental response setting
27 forth its view of any issues regarding proceedings before the AAA. (Doc. # 40).

1 The local rules provide only for a response and reply to a motion. D. Nev. R. 7-2(b)-(c).
2 However, sur-replies may be permitted with the court's approval to address new matters raised in
3 a reply. *Harkey v. U.S. Bank, N.A.*, No. 2:14-cv-00177-RFB-GWF, 2015 WL 300271, at *1 (D.
4 Nev. Jan. 21, 2015). Where a reply asserts new evidence, the court should not consider it without
5 giving the opposing party an opportunity to respond. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th
6 Cir. 1996).

7 In light of the foregoing, the court finds good cause to grant the instant motion for leave to
8 file a supplemental response. For the first time on reply, defendants argued that dismissal is
9 appropriate because the AAA is reopening the parties' arbitration. Plaintiff is entitled to respond
10 to the new evidence provided by defendants before the court rules on the motion to compel
11 arbitration.

12 || Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for
14 leave to file a supplemental response, (doc. # 40), be, and the same hereby is, GRANTED.

15 IT IS FURTHER ORDERED that plaintiff shall file any supplemental response within 14
16 days of the date of this order. Defendants shall file any supplemental reply within 7 days.

17 DATED July 31, 2015.

Xenos C. Mahan
UNITED STATES DISTRICT JUDGE